IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 305 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SUHRID SARABHAI (HUF) TRUST NO.1

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr.Akil Qureshi, learned Counsel for the revenue makes a specific request that since the controversy raised in this reference is concluded by the decision of this Court in C.I.T. vs. Leena Sarabhai , 221 I.T.R.520 and since the reference has been pending before this Court since last eight years, this Bench is requested to take up this reference for final disposal notwithstanding the fact that one of us (D.A.Mehta,J) had appeared for one of the parties at the hearing of the appeal before the Income Tax Appellate Tribunal from which this reference arises.

2 At the instance of the revenue, the Tribunal has referred the following question for determination by us for the assessment year 1982-83 :

"Whether, the Appellate Tribunal is right in law and on facts in holding that when the assessee received shares, debentures and bonds of amalgamated companies, there was no transfer under section 2(47) of the Income-tax Act and consequently no capital gains tax could be charged ?"

3 We have heard Mr.Akil Qureshi, learned Counsel for the revenue and Mr.R.K.Patel, learned Counsel for the assessee.

4 Our attention has been invited to the decision of this Court in the case of C.I.T. vs. Leena Sarabhai, 221 I.T.R. 520, wherein identical question was referred to this Court. After hearing learned Counsel for the parties, this Court observed that in similar cases belonging to the same group or the same set of assesses, the revenue had accepted that there was no transfer of a capital asset within the meaning of Section 2(47) of the Income-tax Act,1961, when the assessee receives bonds and shares of the amalgamated company in lieu of shareholding in the amalgamating company. This Court specifically noted that the department had taken such a view in number of matters and thereafter the Commissioner of Income Tax wrote letter to the learned Solicitor for the Income Tax Department indicating that it was true that the department had chosen not to prefer appeal against the decision of C.I.T.(Appeals) taking view that in such type of cases it would not amount to transfer. That correspondence was produced in a cognate matter being Income Tax Reference No.130 of 1990.

5 In view of the aforesaid facts this Court held

that the question referred to the Court was not required to be determined mainly because the department in similar cases belonging to the same group or the same set of assesses had accepted that where the assesses have received shares and bonds because of amalgamation, there is no transfer of capital assets within the meaning of Section 2(47) of the Income-tax Act,1961.

6 Following the aforesaid decision and reiterating what was observed by the Court in the aforesaid reference, it can be stated that the department had accepted, so far as the same group or the same set of assesses are concerned, the position that in such type of cases there is no transfer of capital asset within the meaning of Section 2(47) of the Income-tax Act,1961.

7 In the result, because of the peculiar facts, the question is left unanswered.

8 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt